



General Assembly

January Session, 2003

***Raised Bill No. 983***

LCO No. 3345

Referred to Committee on Banks

Introduced by:  
(BA)

***AN ACT CONCERNING FOREIGN BANKS AND RECEIVERSHIPS AND  
CONSERVATORSHIPS FOR CONNECTICUT BANKS AND  
CONNECTICUT CREDIT UNIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-223 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) In all cases in which the appointment of a receiver or conservator  
4 for any Connecticut bank or Connecticut credit union is sought, if it is  
5 found that a receiver or conservator should be appointed, the Superior  
6 Court shall appoint [the commissioner] as a receiver or conservator [,  
7 except that the commissioner may request that] the commissioner or, if  
8 requested by the commissioner, the Federal Deposit Insurance  
9 Corporation or the National Credit Union Administration, or their  
10 successor agencies [, be appointed receiver or conservator. If the  
11 commissioner requests appointment of either the Federal Deposit  
12 Insurance Corporation or the National Credit Union Administration,  
13 or their successor agencies, the Superior Court shall make such  
14 appointment] or, if extraordinary circumstances exist, another  
15 competent person. The Superior Court may appoint the receiver or

16 conservator on an ex parte basis upon a sufficient affidavit of the  
17 commissioner or the commissioner's authorized representative  
18 indicating reasonable likelihood that an unsafe or unsound condition  
19 exists which is likely to have an adverse effect upon depositors, share  
20 account holders or creditors. The commissioner may organize a  
21 separate division within the Department of Banking for liquidating  
22 and administering the affairs of the banks or credit unions for which  
23 the commissioner is acting as receiver or conservator, and the  
24 commissioner may appoint such employees as the commissioner  
25 deems necessary for the liquidation or administration of the affairs of  
26 such banks or credit unions. Any salaries and expenses shall be paid  
27 out of the funds of the bank or credit union in the possession of the  
28 commissioner, subject to the approval of the court having jurisdiction.  
29 The commissioner may appoint an agent, who may be an employee of  
30 the Department of Banking or such other person as the commissioner  
31 may deem appropriate and who, in the absence or incapacity of the  
32 commissioner and of the commissioner's deputy, shall have authority  
33 to act for or represent the commissioner in all matters pertaining to the  
34 duties of the commissioner as the receiver or conservator of any  
35 Connecticut bank or Connecticut credit union. Such agent may execute  
36 and sign for the commissioner as the receiver or conservator any  
37 documents, instruments or reports necessary in the administration of  
38 the receivership or conservatorship. The state shall be reimbursed for  
39 any costs or expenses incurred by the Department of Banking in the  
40 administration of the receivership or conservatorship, and the  
41 commissioner may collect from each such estate in receivership or  
42 conservatorship such charges as, in the commissioner's opinion, are  
43 fair and equitable. Any such costs or expenses so collected shall be  
44 deposited with the State Treasurer and shall be credited to the State  
45 Banking Fund. All legal services required by the commissioner or the  
46 commissioner's deputy, agent or employees in connection with such  
47 receivership proceedings or the administration or reorganization of  
48 any such Connecticut bank or Connecticut credit union shall be  
49 performed by the Attorney General, and any salaries and expenses for

50 such legal assistance shall be paid out of the funds of the estate in  
51 receivership or conservatorship with the approval of the superior court  
52 having jurisdiction. Such salaries and expenses shall be allocated by  
53 the commissioner as nearly as possible to the estate in receivership or  
54 conservatorship for which the services were rendered, and the funds in  
55 payment of the same shall be deposited with the State Treasurer and  
56 shall be credited to the appropriation for the Attorney General. The  
57 commissioner shall keep on file in the commissioner's office an  
58 executed copy of each report required to be filed by the commissioner,  
59 as the receiver or conservator, with the clerk of the Superior Court and  
60 shall include a report of each bank or credit union for which the  
61 commissioner is acting as receiver or conservator in the  
62 commissioner's annual report to the Governor. If the commissioner,  
63 the Federal Deposit Insurance Corporation or the National Credit  
64 Union Administration, or their successor agencies, accepts the  
65 appointment as receiver or conservator, no bond shall be required to  
66 be posted.

67 (b) Upon the appointment of a receiver pursuant to subsection (a) of  
68 this section, possession of and title to all assets, business and property  
69 of the Connecticut bank or Connecticut credit union shall pass to and  
70 vest in the receiver without the execution of any instruments of  
71 conveyance, assignment, transfer or endorsement.

72 (c) A receiver or conservator appointed pursuant to subsection (a) of  
73 this section shall have the following powers: (1) To take possession of  
74 the books, records and assets of every description of the Connecticut  
75 bank or Connecticut credit union and collect all debts due and claims  
76 belonging to it; (2) to sue and defend all rights and claims involving  
77 the bank or credit union; (3) to exercise any and all fiduciary functions  
78 of the bank or credit union as of the date of the commencement of the  
79 receivership or conservatorship; (4) to borrow such sums of money as  
80 may be necessary or desirable in the performance of the duties of the  
81 receiver or conservator, and in connection therewith, to secure such  
82 borrowings by the pledge, hypothecation or mortgage of the assets of

83 the bank or credit union; (5) [to sell,] subject to the approval of the  
 84 appointing court, unless such approval is not required under  
 85 subsection (d) of this section, to sell or otherwise dispose of any and all  
 86 real and personal property [and, on like order, to] of the bank or credit  
 87 union; sell, assign, compromise, [and settle] or otherwise dispose of all  
 88 bad or doubtful debts; and compromise all doubtful claims for or  
 89 against the bank or credit union; (6) to exercise all of the power and  
 90 authority of the corporators, shareholders, directors, trustees, officers,  
 91 depositors and share account holders of such bank or credit union in  
 92 carrying out the duty of the receiver or conservator; (7) to exercise such  
 93 other powers and duties as may be reasonably necessary or desirable  
 94 to effectively and efficiently perform the functions of receiver or  
 95 conservator in accordance with federal and state banking and credit  
 96 union laws and regulations.

97 (d) In all cases in which the commissioner is appointed receiver or  
 98 conservator, the commissioner, without the approval of the appointing  
 99 court, may, upon such terms as the commissioner deems in the best  
 100 interest of the Connecticut bank or Connecticut credit union: (1) Sell,  
 101 assign, compromise or otherwise dispose of any bad or doubtful debt  
 102 held by the bank or credit union, the value of which does not exceed  
 103 fifty thousand dollars; (2) compromise any claim, other than a deposit  
 104 claim, against the bank or credit union when the amount proposed to  
 105 be paid in compromise does not exceed fifty thousand dollars,  
 106 provided no claim in favor of the bank or credit union against any  
 107 director, trustee or other officer for breach or neglect of official duty  
 108 shall be compromised without the approval of the court; and (3) sell or  
 109 otherwise dispose of any personal property of the bank or credit union  
 110 the value of which does not exceed fifty thousand dollars. For  
 111 purposes of this subsection, the value of any bad or doubtful debt shall  
 112 be its current value, as determined by the commissioner in good faith,  
 113 and the value of any personal property shall be (A) in the case of any  
 114 single class of a security or any commodity, or other property or claim  
 115 that has a readily ascertainable market value, such market value, and  
 116 (B) in any other case, its current value as determined by the

117 commissioner in good faith.

118       Sec. 2. Section 36a-226 of the general statutes is repealed and the  
119 following is substituted in lieu thereof (*Effective from passage*):

120       The receiver shall, as soon after the receiver's appointment as is  
121 practicable, make and return to the court an inventory and appraisal of  
122 the assets of the Connecticut bank or Connecticut credit union or estate  
123 in receivership, verified by oath according to the receiver's best  
124 knowledge, information and belief, and shall, from time to time  
125 thereafter, make and return such additional or supplementary  
126 inventories and valuations, and render such reports of the receiver's  
127 actions and statements of accounts, as are necessary for the  
128 information of the court or as are required by the order of the court.  
129 The receiver shall hold all the assets which come into the receiver's  
130 possession as such receiver, subject to the order of the court, and shall  
131 convert such assets into money with all reasonable dispatch [, and for  
132 that purpose may sell and dispose of such assets, and make all proper  
133 conveyances thereof, and may compromise all doubtful claims for or  
134 against such bank or credit union; provided no claim in favor of such  
135 bank or credit union against any director, trustee or other officer  
136 thereof, for breach or neglect of official duty, shall be compromised  
137 without the special authority and approval of the court] in accordance  
138 with section 36a-223, as amended by this act. In cases of doubt or  
139 difficulty the receiver may, upon written application, ask the advice of  
140 the court as to the manner in which the receiver shall execute the  
141 receiver's trust. The court may, from time to time, on its own motion,  
142 or on complaint of any interested party, make all necessary and proper  
143 orders as to the proceedings and actions of the receiver.

144       Sec. 3. Section 36a-428n of the general statutes is repealed and the  
145 following is substituted in lieu thereof (*Effective from passage*):

146       (a) As used in this section:

147       (1) "Branch or agency net payment entitlement" means, with respect

148 to a qualified financial contract, the amount, if any, that would have  
149 been owed by a party to a foreign bank after netting only those  
150 transactions entered into by the branch or agency of the foreign bank  
151 in this state and such party under such qualified financial contract.

152 (2) "Branch or agency net payment obligation" means, with respect  
153 to a qualified financial contract, the amount, if any, that would have  
154 been owed by the foreign bank to a party after netting only those  
155 transactions entered into by the branch or agency of the foreign bank  
156 in this state and such party under such qualified financial contract.

157 (3) "Business and property in this state" includes, but is not limited  
158 to, all property of the foreign bank, real, personal or mixed, whether  
159 tangible or intangible, (A) wherever situated, constituting part of the  
160 business of the state agency or state branch of the foreign bank in this  
161 state and appearing on its books as such, and (B) situated within this  
162 state whether or not constituting part of the business of such state  
163 agency or state branch in this state or so appearing on its books.

164 (4) "Global net payment entitlement" means the amount, if any,  
165 owed by a party or that would be owed if the relevant agreements  
166 provided for payments to either party, upon termination thereof under  
167 any and all circumstances, to the foreign bank as a whole after giving  
168 effect to the netting provisions of a qualified financial contract with  
169 respect to all transactions subject to netting under such qualified  
170 financial contract.

171 (5) "Global net payment obligation" means the amount, if any, owed  
172 by the foreign bank as a whole to a party after giving effect to the  
173 netting provisions of a qualified financial contract with respect to all  
174 transactions subject to netting under such qualified financial contract.

175 (6) "Qualified financial contract" means any securities contract,  
176 commodity contract, forward contract [,] including any spot and  
177 forward foreign exchange, [contract,] repurchase agreement, swap  
178 agreement, and any similar agreement, any option to enter into any

179 such agreement, including any combination of the foregoing, [any  
180 other agreement determined by the commissioner by regulation or  
181 order to be a qualified financial contract] and any master agreement  
182 for such agreements. Such master agreement, together with all  
183 supplements thereto, shall be treated as one qualified financial  
184 contract, provided, such contract, option or agreement, or combination  
185 of contracts, options or agreements is reflected in the books, accounts  
186 or records of the foreign bank or a party provides documentary  
187 evidence of such agreement. The commissioner may by regulation or  
188 order determine any other agreement to be a qualified financial  
189 contract.

190 (b) The commissioner may, by order, immediately take possession  
191 of the business and property in this state of any foreign bank with a  
192 state branch or state agency in this state upon the commissioner's  
193 determination that such action is necessary for the protection of the  
194 interests of the creditors of such foreign bank's business in this state or  
195 for the protection of the public interest, and that such foreign bank: (1)  
196 Has violated any applicable law, regulation or order; (2) is conducting  
197 its business in an unauthorized or unsafe manner; (3) is in an unsafe or  
198 unsound condition to transact its business; (4) cannot with safety and  
199 expediency continue business; (5) has ceased to operate its state branch  
200 or state agency in this state; (6) has an impairment of its capital; (7) has  
201 suspended payment of its obligations, made an assignment for the  
202 benefit of its creditors, or admitted in writing its inability to pay its  
203 debts as they become due; (8) has neglected, refused or failed to take or  
204 continue proceedings for voluntary liquidation in accordance with  
205 section 36a-428k; (9) is insolvent in that it has ceased to pay its debts in  
206 the ordinary course of business, cannot pay its debts as they become  
207 due, or has liabilities exceeding its assets; (10) has applied for an  
208 adjudication of bankruptcy, reorganization, arrangement, or other  
209 relief under any bankruptcy, reorganization, insolvency or  
210 moratorium law, or, that any person has applied for any such relief  
211 under any such law against the foreign bank, and the foreign bank has  
212 by any affirmative act approved of or consented to such action or such

213 relief has been granted; (11) is no longer in existence or its authority to  
214 transact banking business under the laws of the place where it is  
215 domiciled has been suspended or terminated; (12) is in liquidation,  
216 receivership or conservatorship at its domicile or elsewhere, or that  
217 any proceeding for appointment of a liquidator, receiver or  
218 conservator or any similar proceeding has been initiated against it, or  
219 there is reason to doubt its ability or willingness to pay in full the  
220 claims of creditors; (13) has otherwise had its license revoked,  
221 suspended, cancelled, terminated or otherwise not renewed pursuant  
222 to the provisions of section 36a-428j; or (14) is in a condition, or facts or  
223 circumstances relating to such foreign bank exist, which, if existing at  
224 the time such foreign bank applied for its license to establish a state  
225 branch or state agency in this state, would have been grounds for  
226 denying such application.

227 (c) Title to such business and property in this state of a foreign bank  
228 shall vest by operation of law in the commissioner and his successors  
229 upon taking possession, without the execution of any instruments of  
230 conveyance, assignment, transfer or endorsement. The commissioner  
231 shall promptly apply to the superior court for the judicial district of  
232 Hartford for appointment as receiver of such foreign bank with effect  
233 from the time of taking possession, and the superior court shall make  
234 such appointment. Thereafter, except as otherwise provided in this  
235 section, the commissioner shall liquidate or otherwise deal with such  
236 business and property in this state of a foreign bank in accordance  
237 with the provisions of sections 36a-223 to 36a-239, inclusive, provided,  
238 (1) "debts", "liabilities", "deposits", "claims" and other similar terms  
239 used in sections 36a-223 to 36a-239, inclusive, refer to the claims that  
240 the commissioner shall accept pursuant to subsection (e) of this  
241 section; (2) "creditors" and "depositors", as used in such sections, refer  
242 to the owners of such accepted claims; (3) except as the context  
243 otherwise requires, "Connecticut bank", as used in such sections, refers  
244 to the state branches or state agencies in this state; and (4) "officer", as  
245 used in such sections, includes any person in charge of or who is an  
246 officer of such state branches and the agent or other person in charge

247 of such state agencies. Notwithstanding any contrary provision of law,  
248 including chapters 55a and 67, the commissioner may employ or  
249 contract with such legal counsel and expert assistants under such titles  
250 as the commissioner may assign to them and may retain such of the  
251 officers or employees of such foreign bank as the commissioner deems  
252 necessary in the liquidation and distribution of the assets of such  
253 foreign bank, without the prior approval of any other state agency or  
254 elective officers. The commissioner shall be entitled to the appointment  
255 of a single judge to supervise the liquidation upon request to the  
256 administrative judge of the superior court for the judicial district of  
257 Hartford. Said judge shall have the power to order expedited or  
258 simplified procedures whenever necessary to resolve a matter in such  
259 liquidation.

260 (d) At any time within ten days after the commissioner has taken  
261 possession of the business and property in this state of a foreign bank,  
262 such foreign bank may apply to the superior court for the judicial  
263 district of Hartford for an order requiring the commissioner to show  
264 cause why the commissioner should not be enjoined from continuing  
265 such possession. The court may, upon good cause shown, direct the  
266 commissioner to refrain from further proceedings and to surrender  
267 such possession.

268 [(e) Only the claims of creditors of such foreign bank arising out of  
269 transactions entered into by such creditors with its state branches or  
270 state agencies in this state, shall be accepted by the commissioner for]

271 (e) (1) The only claims that the commissioner shall accept for  
272 payment out of such business and property in this state of a foreign  
273 bank as provided in this section are claims of creditors of such foreign  
274 bank arising out of transactions entered into by such creditors with its  
275 state branches or state agencies in this state that still exist as liabilities  
276 of such state branches and state agencies as shown in the books and  
277 records of such state branches and state agencies at the time the  
278 commissioner takes possession of the business and property of the

279 foreign bank. Acceptance or rejection of such claims by the  
 280 commissioner shall not prejudice such creditors' rights to otherwise  
 281 share in the assets of such foreign bank. The following claims shall not  
 282 be accepted by the commissioner for payment out of such business and  
 283 property in this state of a foreign bank: [(1)] (A) Claims which would  
 284 not represent an enforceable legal obligation against such state branch  
 285 or state agency if such branch or agency were a separate and  
 286 independent legal entity; and [(2)] (B) amounts due and other liabilities  
 287 to other offices, agencies, branches and affiliates of such foreign bank.  
 288 [Whenever the principal amount of any such claim owed by or owing  
 289 to such foreign bank does not exceed fifty thousand dollars, the  
 290 commissioner may sell, assign, compromise or otherwise dispose of  
 291 the same upon such terms as the commissioner may deem for the best  
 292 interest of such foreign bank without obtaining the approval of the  
 293 court otherwise having jurisdiction of the matter.] All wages actually  
 294 owing to the employees of a foreign bank in the possession of the  
 295 commissioner for services rendered within three months prior to the  
 296 date when possession was taken, not exceeding two thousand dollars  
 297 to each employee, shall be paid prior to the payment of every other  
 298 debt or claim, and in the discretion of the commissioner may be paid  
 299 as soon as practicable after taking possession, except that at all times  
 300 the commissioner shall reserve such funds as will in the  
 301 commissioner's opinion be sufficient for the expenses of  
 302 administration.

303 (2) Nothing in this section shall be construed to adversely affect a  
 304 valid lien or perfected security interest of the New York Federal  
 305 Reserve Bank against property of the foreign bank in this state.

306 (f) Whenever the accepted claims, together with interest thereon,  
 307 and the expenses of the liquidation have been paid in full or properly  
 308 provided for, the commissioner, upon the order of the superior court  
 309 for the judicial district of Hartford, shall [turn over] pay, from the  
 310 remaining assets, [to] other offices of the foreign bank that are being  
 311 liquidated in the United States, upon the request of the liquidators of

312 such offices, in amounts which the liquidators of such offices  
313 demonstrate to the commissioner are needed to pay the claims  
314 accepted by such liquidators and any expenses incurred by such  
315 liquidators in liquidating such offices of the foreign bank. After such  
316 payments, if any, have been made, the commissioner shall turn over  
317 any remaining assets of the foreign bank to the principal office of such  
318 foreign bank, or to the duly appointed domiciliary liquidator or  
319 receiver of such foreign bank.

320 (g) After taking possession of the business and property in this state  
321 of any foreign bank: (1) The commissioner shall immediately give  
322 notice of such fact to all persons known to the commissioner to hold  
323 any assets of such foreign bank. No person having notice or  
324 knowledge that the commissioner has taken possession of the business  
325 and property in this state of such foreign bank, shall have a lien or  
326 charge for any payment, advance or clearance thereafter made against  
327 any of the assets of such foreign bank for liability thereafter incurred.  
328 (2) Upon the written demand of the commissioner, any person holding  
329 assets of such foreign bank shall deliver such assets to the  
330 commissioner and shall thereupon be discharged from liability with  
331 respect to any claim upon such assets, provided, such demand shall  
332 not affect the right of a secured creditor with a perfected security  
333 interest, or other valid lien or security interest enforceable against third  
334 parties, to retain collateral, including any right of such secured creditor  
335 under any security arrangement related to a qualified financial  
336 contract to retain collateral and apply such collateral in accordance  
337 with this section. Nothing in this section shall affect any right of set-off  
338 permitted under applicable law, provided, no person may set off the  
339 business and property in this state of a foreign bank against liabilities  
340 of such foreign bank other than those that arise out of transactions  
341 entered into by such person with the state branch or state agency of the  
342 foreign bank in this state, which liabilities shall be deemed to include  
343 in the case of qualified financial contracts the lesser of the two amounts  
344 calculated with respect to any such qualified financial contract  
345 pursuant to subdivision (2) of subsection (i) of this section.

346 (h) (1) The commissioner shall, after taking possession of the  
347 business and property in this state of a foreign bank, cause to be  
348 mailed or sent to each person claiming to be, or appearing upon the  
349 books of such foreign bank to be (A) the owner of any personal  
350 property in the custody or possession of such foreign bank as bailee or  
351 depositary for hire or otherwise, including securities, whether held in  
352 custody directly or in book-entry form by such foreign bank, its  
353 nominee, subcustodian, clearing corporation or similar entity, and the  
354 contents of any safe, vault or box opened for nonpayment of rental in  
355 accordance with the provisions of this subsection, or (B) the lessee of  
356 any safe, vault or box, a notice in writing sent by registered mail,  
357 return receipt requested, or by any express delivery carrier that  
358 provides a dated delivery receipt, to such person at such person's last  
359 address as it appears on the books of such foreign bank or at such  
360 person's last known address if no address appears on such books,  
361 notifying such person to remove all such property or the contents of  
362 any such safe, vault or box, within a period stated in such notice,  
363 which period shall be not less than sixty days from the date of such  
364 notice, and further notifying such person of the terms and provisions  
365 of this subsection and any regulations that may be adopted under this  
366 section by the commissioner pursuant to chapter 54. The contract of  
367 bailment or of deposit for hire, or the lease of such safe, vault or box, if  
368 any, between the person to whom such notice is mailed and such  
369 foreign bank shall terminate upon the date for removal fixed in such  
370 notice. Such person shall have a claim against such foreign bank for the  
371 amount of unearned rent or charges, if any, paid by such person from  
372 the date fixed in such notice if the property or contents are removed on  
373 or before such date, or from the date of actual removal if the property  
374 or contents are removed after such date.

375 (2) If such property or contents are not removed, and all accrued  
376 rental or storage and other charges, if any, are not paid, within the  
377 time fixed by such notice, the commissioner shall inventory and deal  
378 with such property and contents in accordance with any regulations  
379 that may be adopted under this section by the commissioner pursuant

380 to chapter 54. The commissioner shall deal with such property and  
381 contents at the expense and risk of the person in whose name it stands.  
382 The commissioner shall be held harmless and shall not be liable to any  
383 subsequent claimant for any delivery or transfer made by the  
384 commissioner in good faith to the claimant appearing to be entitled to  
385 such property from the records available to the commissioner. If the  
386 commissioner is in doubt concerning the person entitled to property in  
387 the possession of the commissioner, or there are conflicting claims  
388 thereto, the commissioner may require of the claimant an order of the  
389 superior court of the judicial district of Hartford authorizing and  
390 directing the delivery of such property.

391 (3) After the expiration of one year from the date of mailing the  
392 notice required by subdivision (1) of this subsection, the commissioner  
393 may apply to the superior court for the judicial district of Hartford for  
394 an order authorizing the commissioner to sell, destroy or otherwise  
395 dispose of any personal property which had been in the custody or  
396 possession of such foreign bank as bailee or depositary for hire or  
397 otherwise and which remains in the possession of the commissioner.  
398 The court may require that the commissioner provide notice to the  
399 person in whose name such property stands and to any other person  
400 claiming or appearing to have an interest therein, by publication,  
401 mailing or in such other manner as the court may prescribe. Whenever  
402 the commissioner is given the power to sell such property, such power  
403 to sell shall be deemed a power to sell in satisfaction of a lien for  
404 nonpayment of accrued rental or storage charges and all other charges  
405 and expenses paid or incurred to the date of sale with respect to such  
406 property. Such power to sell, destroy or otherwise dispose of, when  
407 authorized pursuant to this subsection or any regulations that may be  
408 adopted under this section by the commissioner pursuant to chapter  
409 54, shall be deemed to include the power to sell, destroy or otherwise  
410 dispose of any bonds, stock certificates, promissory notes, choses in  
411 action or other securities, and any other tangible or intangible property  
412 contained in any package, regardless of whether or not it shall appear  
413 from such securities or properties that the person in whose name the

414 package stands possesses title to or interest in such securities or other  
415 properties or the power to transfer such title or interest, and any sale of  
416 such securities or properties pursuant to this subsection shall vest  
417 good title thereto in the purchaser thereof.

418 (4) The provisions of this subsection shall not (A) affect or preclude  
419 any other remedy, by civil action or otherwise, for the enforcement of  
420 the claims or rights of the commissioner or of such foreign bank  
421 against the person in whose name any property, or any safe, vault,  
422 box, package, parcel or receptacle stands, or (B) affect or bar the right  
423 of the commissioner or the foreign bank to recover, before sale, any  
424 debt or claim due the commissioner or such foreign bank, or, after sale,  
425 the portion of the debt or claim that was not paid by the proceeds of  
426 the sale.

427 (i) (1) Except as otherwise provided in this subsection, after taking  
428 possession of the business and property in this state of a foreign bank,  
429 the commissioner may assume or repudiate any contract, including an  
430 unexpired lease, of such foreign bank, relating to the business and  
431 property in this state of such foreign bank and to which such foreign  
432 bank is a party, the performance of which the commissioner  
433 determines to be burdensome and the repudiation of which the  
434 commissioner determines will promote the orderly administration of  
435 the foreign bank's affairs in this state. After the expiration of ninety  
436 days from the date that the commissioner takes possession, any party  
437 to a contract with the foreign bank relating to the business and  
438 property in this state of such foreign bank may demand in writing that  
439 the commissioner assume or repudiate such contract. If the  
440 commissioner has not assumed or repudiated the contract within  
441 fifteen days from the date of receipt of the demand, the affected party  
442 may bring an action in the superior court for the judicial district of  
443 Hartford to obtain an order requiring the commissioner to decide  
444 whether to assume or repudiate such contract. If the commissioner has  
445 not assumed or repudiated a contract not later than one month before  
446 the last date for filing claims against such foreign bank established

447 pursuant to section 36a-225, such contract shall be deemed repudiated.  
448 Notwithstanding the provisions of this subdivision, with respect to an  
449 unexpired lease of the foreign bank for the rental of real property  
450 under which the foreign bank was a lessee, if the commissioner  
451 remains in possession of the leasehold, the commissioner shall not be  
452 required to assume or repudiate such lease and may continue in  
453 possession of such leasehold for the remainder of the term of the lease  
454 in accordance with the terms of the lease, provided, if the  
455 commissioner later repudiates the lease before the end of the lease  
456 term, any amounts that may be due the lessor as a result of such  
457 repudiation shall be calculated according to the provisions of  
458 subparagraph (A) of subdivision (3) of this subsection.  
459 Notwithstanding any contrary provision of this subsection, in  
460 liquidating a state branch or state agency of a foreign bank in this state,  
461 the commissioner shall not assume or repudiate any qualified financial  
462 contract that such state branch or state agency entered into which is  
463 subject to a multibranch netting agreement or arrangement that  
464 provides for netting present or future payment obligations or payment  
465 entitlements, including termination or closeout values relating to the  
466 obligations or entitlements, among the parties to the contract,  
467 agreement or arrangement, and the commissioner shall not be required  
468 to assume or repudiate any other qualified financial contract that such  
469 state branch or state agency entered into, provided, upon any  
470 repudiation of any qualified financial contract or the termination or  
471 liquidation of any qualified financial contract in accordance with its  
472 terms, the liability under such qualified financial contract shall be  
473 determined in accordance with subparagraph (B) of subdivision (2) of  
474 this subsection.

475 (2) (A) Except as otherwise provided in this subsection, upon the  
476 repudiation or termination of any contract pursuant to subdivision (1)  
477 of this subsection, liability shall be limited to the actual direct  
478 compensatory damages of the parties to the contract, determined as of  
479 the date the commissioner took possession. The commissioner shall not  
480 be liable for any future wages, other than reasonable severance

481 payments, or for payments for future services, costs of cover, any  
482 consequential, punitive or exemplary damages, damages for lost  
483 profits or lost opportunity, or any other damages except as allowed by  
484 this subparagraph.

485 (B) Except as otherwise provided in this subsection, the liability of  
486 the commissioner upon the repudiation of any qualified financial  
487 contract, or in connection with the termination or liquidation of any  
488 qualified financial contract in accordance with the terms thereof, shall  
489 be limited as provided in subparagraph (A) of this subdivision, except  
490 that compensatory damages shall be deemed to include normal and  
491 reasonable costs of cover or other reasonable measures of damages  
492 utilized among participants in the market for qualified financial  
493 contract claims, calculated as of the date of repudiation or the date of  
494 the termination of such qualified financial contract in accordance with  
495 its terms. Upon the repudiation of any qualified financial contract or in  
496 connection with the termination or liquidation of any qualified  
497 financial contract in accordance with the terms thereof, if the  
498 commissioner is entitled to damages, such damages shall be paid by  
499 the party to the commissioner upon written demand pursuant to  
500 subdivision (2) of subsection (g) of this section, notwithstanding any  
501 provision in any such contract that purports to effect a forfeiture of  
502 such damages.

503 (C) In the case of the liquidation of a state branch or state agency of  
504 a foreign bank by the commissioner, with respect to qualified financial  
505 contracts subject to netting agreements or arrangements that provide  
506 for netting present or future payment obligations or payment  
507 entitlements, including termination or closeout values relating to the  
508 obligations or entitlements, among the parties to the contracts and  
509 agreements or arrangements, the liability of the commissioner to any  
510 party to any such qualified financial contract upon repudiation or in  
511 connection with the termination or liquidation of such qualified  
512 financial contract in accordance with the terms thereof, shall be  
513 calculated as of the date of repudiation or the date of the termination

514 of such qualified financial contract in accordance with its terms and  
 515 shall be limited to the lesser of (i) the global net payment obligation or  
 516 (ii) the branch or agency net payment obligation. The liability of the  
 517 commissioner under this subparagraph shall be reduced by any  
 518 amount otherwise paid to or received by the party in respect of the  
 519 global net payment obligation pursuant to such qualified financial  
 520 contract which, if added to the liability of the commissioner under this  
 521 subdivision, would exceed the global net payment obligation. The  
 522 liability of the commissioner under this subparagraph to a party to a  
 523 qualified financial contract also shall be reduced by the fair market  
 524 value or the amount of any proceeds of collateral that secures and has  
 525 been applied to satisfy the obligations of the foreign bank to the party  
 526 pursuant to such qualified financial contract. In the event that netting  
 527 under any applicable netting agreement or arrangement results in a  
 528 branch or agency net payment entitlement, notwithstanding any  
 529 provision in any such contract that purports to effect a forfeiture of  
 530 such entitlement, the commissioner may make written demand upon  
 531 the party to such contract under subdivision (2) of subsection (g) of  
 532 this section for an amount not to exceed the lesser of the global net  
 533 payment entitlement or the branch or agency net payment entitlement.  
 534 The liability of the party under this subparagraph shall be reduced by  
 535 any amount otherwise paid to or received by the commissioner or any  
 536 other liquidator or receiver of the foreign bank with respect to the  
 537 global net payment entitlement pursuant to such qualified financial  
 538 contract which, if added to the liability of the party under this  
 539 subparagraph, would exceed the global net payment entitlement. The  
 540 liability of the party under this subparagraph to the commissioner  
 541 pursuant to such qualified financial contract shall also be reduced by  
 542 the fair market value or the amount of any proceeds of collateral that  
 543 secures and has been applied to satisfy the obligations of the party to  
 544 the foreign bank pursuant to such qualified financial contract.

545 (D) A party to a qualified financial contract with [the] a foreign bank  
 546 whose state branch or state agency [in this state of the foreign bank]  
 547 the commissioner is liquidating, which party has a perfected security

548 interest in collateral [.] or other valid lien or security interest in  
549 collateral enforceable against third parties pursuant to a security  
550 arrangement related to such qualified financial contract, may retain all  
551 such collateral and [.] upon repudiation [or termination] of that  
552 qualified financial contract, or in connection with the termination or  
553 liquidation of that qualified financial contract in accordance with its  
554 terms, apply such collateral in satisfaction of any claims secured by the  
555 collateral, provided the total amount so applied to such claims shall  
556 not exceed the global net payment obligation, if any.

557 (3) (A) If the commissioner repudiates a lease of the foreign bank for  
558 the rental of real or personal property under which the foreign bank  
559 was a lessee, the lessor under such lease shall be entitled to file a claim  
560 with the commissioner for whichever is the least of: (i) The amount  
561 designated as liquidated damages contained in the agreement between  
562 the foreign bank and the lessor, (ii) an amount equal to one year's rent  
563 under the terms of the repudiated lease, or (iii) an amount equal to the  
564 rent for the remaining term of the lease.

565 (B) If the commissioner repudiates a lease of the foreign bank for the  
566 rental of real property under which the foreign bank was a lessor, and  
567 the lessee was not in default at the time of repudiation, the lessee  
568 under such repudiated lease may either (i) treat the lease as terminated  
569 by such repudiation and vacate the premises, or (ii) remain in  
570 possession of the leasehold interest for the balance of the term of the  
571 lease, and for any renewal or extension of such term that is enforceable  
572 by such lessee under applicable law other than any law relating to  
573 insolvency, unless the lessee defaults under the terms of the lease after  
574 the date of such repudiation. If the lessee remains in possession of the  
575 leasehold interest, the lessee shall continue to pay to the commissioner  
576 the contractual rent pursuant to the terms of the lease after the date of  
577 the repudiation of such lease and may offset against such rent payment  
578 any damages which may accrue due to the nonperformance of any  
579 obligation of the foreign bank under the lease after the date of  
580 repudiation. The commissioner shall not be liable to the lessee for any

581 damages arising after such date as a result of the repudiation other  
582 than the amount of any offset allowed under this subdivision. Nothing  
583 in this subsection shall prohibit the commissioner from entering into a  
584 new contract with the lessee for the rental of the leasehold which was  
585 the subject of the repudiated lease.

586 (4) Except as otherwise provided in this subsection, notwithstanding  
587 any provision in an unexpired lease or other contract and  
588 notwithstanding any applicable law to the contrary, a contract or  
589 unexpired lease of the foreign bank that is subject to assumption or  
590 repudiation by the commissioner under this subsection may not be  
591 terminated or modified by any party other than the commissioner  
592 without the concurrence of the commissioner. Any right or obligation  
593 under such contract or lease may not be terminated or modified, at any  
594 time after the commissioner takes possession, solely pursuant to a  
595 provision in such contract or lease that is conditioned on (A) the  
596 commissioner taking possession, or (B) the insolvency, financial  
597 condition or liquidation of the foreign bank.

598 (5) Nothing in this subsection shall affect the right of a party to a  
599 contract of a foreign bank to seek performance of such contract or  
600 damages thereon in any other jurisdiction, provided, the commissioner  
601 shall not be liable for the performance of such contract or damages  
602 thereon in any other jurisdiction.

603 (6) The rights granted in this subsection are in addition to any other  
604 rights available to the commissioner under any other law.

605 (j) Where, by any agreement, a period of limitation is fixed for  
606 instituting an action upon any claim or for presenting or filing any  
607 claim, proof of claim, proof of loss, demand, notice or the like, or  
608 where, in any action or by statute or ordinance, a period of limitation is  
609 fixed for serving or filing any claim or pleading, taking any appeal or  
610 doing any other act, and where in any such case such period had not  
611 expired as of the date the commissioner took possession of the  
612 business and property in this state of the foreign bank, the

613 commissioner may for the benefit of such foreign bank institute any  
614 such action, serve or file any such claim or pleading, take any such  
615 appeal, or do any such other act, required or permitted to such foreign  
616 bank within a period of one year subsequent to the date of taking  
617 possession, or within such further period as may be permitted by the  
618 agreement, or in the action, or by statute or ordinance, as the case may  
619 be.

620 (k) (1) Except as provided in this subsection, the commissioner's  
621 taking possession of the business and property in this state of a foreign  
622 bank shall operate as a stay of and as an injunction against the  
623 following, as of the date the commissioner takes possession: (A) The  
624 commencement or continuation, including the issuance or  
625 employment of process, of a judicial, administrative or other action or  
626 proceeding against the foreign bank that was or could have been  
627 commenced before the taking of possession, or to recover a claim  
628 against the foreign bank that arose before the taking of possession; (B)  
629 the enforcement against the foreign bank or its business and property  
630 in this state of a judgment obtained before the taking of possession; (C)  
631 any act to obtain possession of property of the foreign bank or of  
632 property from the foreign bank or to exercise control over property of  
633 the foreign bank; (D) any act to create, perfect, or enforce any lien  
634 against property of the foreign bank, including any lien that secures a  
635 claim that arose before the taking of possession; and (E) any act to  
636 collect, assess, or recover a claim against the foreign bank that arose  
637 before the taking of possession.

638 (2) The commissioner's taking possession of the business and  
639 property in this state of a foreign bank shall not operate as a stay of or  
640 as injunction against: (A) The filing of a claim pursuant to subsection  
641 (e) of this section in the liquidation of the foreign bank; the making of a  
642 demand upon the commissioner pursuant to subsection (i) of this  
643 section to decide whether to assume or repudiate a contract of the  
644 foreign bank; the exercise of any set-off otherwise permissible under  
645 applicable law except as limited by subdivision (2) of subsection (g) of

646 this section; the right of any secured creditor with a perfected security  
647 interest or other valid lien or security interest enforceable against third  
648 parties to retain collateral, including any right of such secured creditor  
649 under any security arrangement related to a qualified financial  
650 contract, to retain collateral and to apply such collateral in accordance  
651 with subparagraph (D) of subdivision (2) of subsection (i) of this  
652 section; any automatic termination in accordance with the terms of any  
653 qualified financial contract or any right to cause the termination or  
654 liquidation of any qualified financial contract, in accordance with the  
655 terms thereof; any right to offset or net out any termination value,  
656 payment amount, or other transfer obligation arising under or in  
657 connection with one or more such qualified financial contracts; or the  
658 commencement of an action under subsection (d) of this section or any  
659 other action relating to the liquidation before the Superior Court judge  
660 overseeing the liquidation of the foreign bank; (B) the commencement  
661 or continuation of a criminal action or proceeding against the foreign  
662 bank; (C) the commencement or continuation of an action or  
663 proceeding by a governmental unit to enforce such governmental  
664 unit's police or regulatory power; (D) the enforcement of a judgment,  
665 other than a money judgment, obtained in an action or proceeding by a  
666 governmental unit to enforce such governmental unit's police or  
667 regulatory power; (E) the issuance to the foreign bank by a  
668 governmental unit of a notice of tax deficiency; and (F) the  
669 commencement or continuation of a judicial action or proceeding by a  
670 secured creditor with a perfected security interest, or other valid lien  
671 or security interest enforceable against third parties, including any  
672 right of such secured creditor under any security arrangement related  
673 to a qualified financial contract, to enforce such security interest or  
674 lien.

675 (3) Except as otherwise provided in this subsection: (A) The stay or  
676 enjoining of an act against property of the foreign bank under this  
677 subsection shall continue until such property is no longer the property  
678 of the commissioner in possession of the foreign bank; and (B) the stay  
679 or enjoining of any other act under this subsection shall continue until

680 the commissioner has concluded the liquidation.

681 (4) For good cause shown, on request of a party in interest and after  
 682 notice and a hearing, the Superior Court judge overseeing the  
 683 liquidation may grant relief from the stay or injunction provided under  
 684 this subsection by terminating, annulling, modifying or conditioning  
 685 such stay or injunction.

686 (5) In the case of any wilful violation of a stay or injunction  
 687 provided in this subsection by any person or entity who has  
 688 knowledge of the commissioner taking possession of the business and  
 689 property in this state of a foreign bank that is the subject of the stay or  
 690 injunction, the commissioner shall recover actual damages, including  
 691 costs and reasonable attorneys' fees and, in appropriate circumstances,  
 692 may recover punitive damages.

693 (l) The commissioner shall not accept any claim based on an  
 694 agreement with the foreign bank unless the agreement is either  
 695 reflected on the accounts, books or records of the foreign bank or a  
 696 creditor provides documentary evidence of such agreement.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>

**Statement of Purpose:**

To update statutory provisions concerning (1) the involuntary liquidation of state branches and state agencies of foreign banks, and (2) receiverships and conservatorships for Connecticut banks and Connecticut credit unions.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*